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NOV 25 2005

OFFICE OF PETITIONS

In re Application of	:	
Phan, et al.	:	
Application No. 10/086,941	:	DECISION ON PETITION
Filed: 26 February, 2002	:	
Attorney Docket No.: BTI2 00103502(USP2)	:	
USP7X1	:	

This is a decision on the petition filed on 31 August, 2005, under 37 C.F.R. §1.183 (seeking a waiver of the provisions of 37 C.F.R. §1.67), but treated more appropriately under 37 C.F.R. §1.47(a)

NOTE: **There is a lack of clarity in the file as to the Power of Attorney and proper Correspondence Address for this matter.**

Therefore, Petitioner hereby is placed on notice that, if Petitioner desires to receive future correspondence regarding this application at the address corresponding to Petitioner's registration address and to the Customer Number set forth by Petitioner, the appropriate Notice of Change of Address/Revocation-Power of Attorney documentation must be submitted (as separate documents, pursuant to the rules). A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the

address of record until such time as appropriate instructions are received to the contrary.

The petition:

- as considered under 37 C.F.R. §1.47(a) is **GRANTED**; and
- under 37 C.F.R. §1.183 (seeking waiver of 37 C.F.R. §1.67) is **DISMISSED** as moot.

BACKGROUND AND ANALYSIS

The record reflects that:

- during prosecution the Examiner observed a defect in the instant application, in that it was filed on 26 February, 2002, absent, *inter alia*, a fully and properly executed oath/declaration (co-inventor KaYuen Yeung had altered the address without initialing and dating the change), and on 25 March, 2005, the Examiner mailed a non-final Office action requiring correction of the defect, and setting therein, *inter alia*, a three- (3-) month period for reply absent extension of time;
- on 31 August, 2005, Petitioner Jerry L. Hefner (Reg. No. 53,009) filed (with a request and fee for extension of time) an oath/declaration signed by co-inventor Bridgette Chau Phan, Jorma Ante Virtanen, Amethyst Hoang Lam (on behalf of themselves and), but without the signature of now non-signing inventor KaYuen Yeung, and with a statement by Petitioner as to the process of sending the entire application (description, claims, abstract and drawings) for review, with the oath/declaration for signature, supported said statement with a copy of the transmittal letters, and set forth the averred last known and valid current address of the non-signing inventor;
- Petitioner seeks a waiver under 37 C.F.R. §1.183 of the requirements of 37 C.F.R. §1.67;
- however, as is clear from the record, a waiver is not necessary here because Petitioner has tracked the requirements of the underlying provisions of 37 C.F.R. §1.47(a), in that when

. . . a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor . . .
- and this may be done if Petitioner sends to the non-signing inventor the entire application

(description, claims, abstract and drawings) and submits "[t]he oath or declaration in such an application * * * accompanied by a petition including proof of the pertinent facts, the fee set forth in §1.17(h), and the last known address of the nonsigning inventor." (See: 37 C.F.R. §1.47(a), and MPEP §409.03(b) and §409.03(d).)

Petitioner has made such a showing herein.

Lastly, Petitioner has submitted a declaration in compliance with 37 C.F.R. §1.63 and §1.64 and Petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is released to the Technology Center for further examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



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Office of Petitions

cc:

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